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INTERSTATE FIRE & CASUALTY COMPANY

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Attorneys for Defendants and Counter-Claimant

UNITED NATIONAL INSURANCE COMPANY

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

**SAN FRANCISCO/OAKLAND DIVISION**

INTERSTATE FIRE & CASUALTY  
COMPANY,

Plaintiff,

vs.

UNITED NATIONAL INSURANCE  
COMPANY, and DOES 1 - 10

Defendants.

) Case No. CV 07-04943 MHP

) **JOINT STATEMENT OF UNDISPUTED**  
) **FACTS**

) Complaint Filed: August 21, 2007

) Counterclaim Filed: October 1, 2007

UNITED NATIONAL INSURANCE  
COMPANY,

Counterclaimant,

vs.

INTERSTATE FIRE & CASUALTY  
COMPANY and ROES 1 - 10,

Counter-Defendants.

1 Pursuant to Local Rule 56-2(b), Plaintiff and Counter-Defendant INTERSTATE FIRE &  
2 CASUALTY ("Interstate") and Defendant and Counter-Claimant UNITED NATIONAL  
3 INSURANCE COMPANY ("United National") hereby jointly submit the following statement of  
4 undisputed facts for consideration along with the parties' respective motions for summary  
5 judgment/adjudication:

6 1. Interstate issued policy number ASC1000204 to named insured Cirrus Medical  
7 Staffing, LLC (hereinafter "Cirrus"), for the policy period January 27, 2005, through January 27,  
8 2006 (hereinafter "the Interstate Policy"). Attached hereto as **Exhibit A** is a true and correct  
9 copy of the Interstate Policy.

10 2. United National issued policy number AH-0000267 to named insured Cirrus for  
11 the policy period January 27, 2006, through January 27, 2007 (hereinafter "the United National  
12 Policy"). Attached hereto as **Exhibit B** is a true and correct copy of portions of the United  
13 National policy.

14 3. On or about April 22, 2004, Cirrus contracted with the Hospital Services  
15 Corporation to provide medical staffing for the Lovelace Sandia Health Systems facility in  
16 Albuquerque, New Mexico (hereinafter "Lovelace Sandia"). Attached hereto as **Exhibit C** is a  
17 document United National and Interstate believe to be, and do not contest for purposes of these  
18 cross-motions, a true and correct copy of the Hospital Services Corporation contract.

19 4. On or about August 16, 2004, Cathy Robinson entered into a "Traveling Medical  
20 Professional Services Agreement" with Cirrus providing that Robinson would be employed by  
21 Cirrus as a traveling Registered Nurse. Attached hereto as **Exhibit D** is a document United  
22 National and Interstate believe to be, and do not contest for purposes of these cross-motions, a  
23 true and correct copy of the Agreement.

24 5. On or about August 30, 2004, Cirrus assigned Robinson to work as a Registered  
25 Nurse for Lovelace Sandia's Albuquerque, New Mexico, hospital.

26 6. On or about October 7, 2004, Lovelace Sandia patient Marilyn Tracy died.  
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1           7.       On September 14, 2005, Marilyn Tracy's estate filed a lawsuit styled *Ben Tracy,*  
2 *as Personal Representative of the Estate of Marilyn Tracy, Deceased v. Lovelace Sandia Health*  
3 *d/b/a/ Albuquerque Regional Medical Center* (hereinafter "the Tracy Action"). Attached hereto  
4 as **Exhibit E** is a true and correct copy of the original complaint filed in the Tracy Action.

5           8.       On January 4, 2006, Ellen Thorne Skrak, defense counsel for Lovelace Sandia in  
6 the Tracy Action, sent Cirrus a facsimile letter, which Interstate and United National do not  
7 dispute for the purpose of these cross-motions Cirrus received on or about January 4, 2006.  
8 Attached hereto as **Exhibit F** is a true and correct copy of this letter.

9           9.       On January 5, 2006, Skrak sent Cirrus a facsimile copy of the original complaint  
10 in the Tracy Action, which Interstate and United National do not dispute for the purpose of these  
11 cross-motions Cirrus received on or about January 5, 2006. Attached hereto as **Exhibit G** is a  
12 true and correct copy of the cover sheet for the facsimile.

13           10.      On January 5, 2006, Robert Watson of Watson Insurance Agency, Inc., prepared a  
14 "General Liability Notice of Occurrence/Claim" form. Attached hereto as **Exhibit H** is a true  
15 and correct copy of the form prepared by Watson.

16           11.      On January 6, 2006, Terry Bellotti of Health Care Insurers sent an e-mail to  
17 Interstate providing Watson's January 5, 2006, form and Skrak's January 4, 2006, letter.  
18 Interstate believes, and does not dispute for the purpose of these cross-motions, that it received  
19 Bellotti's e-mail on or about January 6, 2006. Attached hereto as **Exhibit I** is a true and correct  
20 copy of Bellotti's January 6, 2006, e-mail.

21           12.      On January 10, 2006, Skrak sent Interstate a facsimile with a copy of the original  
22 complaint in the Tracy Action. Interstate believes, and does not dispute for the purpose of these  
23 cross-motions, that it received Skrak's facsimile on or about January 10, 2006. Attached hereto  
24 as **Exhibit J** is a true and correct copy of the cover sheet to Skrak's January 10, 2006, facsimile.

25           13.      On January 18, 2006, Cheryl Kleinke of United National received an e-mail from  
26 Bill Hanaway, which United National believes, and does not dispute for the purpose of these  
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1 cross-motions, Kleinke received on or about January 18, 2006. Attached hereto as **Exhibit K** is  
2 a true and correct copy of Hanaway's January 18, 2006, e-mail.

3 14. On March 21, 2006, Plaintiffs filed a first amended complaint in the *Tracy*  
4 Action. Attached hereto as **Exhibit L** is a true and correct copy of the first amended complaint  
5 filed in the *Tracy* Action.

6 15. Interstate and United National believe, and do not dispute for the purpose of these  
7 cross-motions, that Cirrus was served with the first amended complaint in the *Tracy* Action on or  
8 about March 28, 2006.

9 16. Interstate and United National each received a copy of the first amended  
10 complaint in the *Tracy* Action no later than April 11, 2006.

11 17. On March 29, 2006, United National sent a letter to Cirrus. Attached hereto as  
12 **Exhibit M** is a true and correct copy of United National's March 29, 2006, letter to Cirrus.

13 18. On April 11, 2006, Interstate appointed defense counsel to defend Cirrus in the  
14 *Tracy* Action. Attached hereto as **Exhibit N** is a true and correct copy of Interstate's letter  
15 appointing defense counsel.

16 19. On April 11, 2006, Jennifer Green of Interstate and Diane Cruz of United  
17 National exchanged a series of e-mails. Attached hereto as **Exhibit O** are true and correct copies  
18 of the e-mails.

19 20. On April 11, 2006, Cruz sent an e-mail to Greg Allen of Cirrus. Attached hereto  
20 as **Exhibit P** is a true and correct copy of Cruz's e-mail.

21 21. On April 11, 2006, Cruz sent a letter to Allen. Attached hereto as **Exhibit Q** is a  
22 true and correct copy of Cruz's letter.

23 22. On April 11, 2006, Green sent a fax to Cruz. Attached hereto as **Exhibit R** is a  
24 true and correct copy of Green's fax.

25 23. On October 6, 2006, United National sent a letter to Cirrus regarding the *Tracy*.  
26 Action. Attached hereto as **Exhibit S** is a true and correct copy of United National's October 6,  
27 2006, correspondence to Cirrus.  
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1           24.     On October 10, 24, and 25, 2006, Cruz and Green exchanged a series of e-mails.  
2 Attached hereto as **Exhibit T** are true and correct copies of these e-mails.

3           24.     On February 13, 2007, United National sent a letter to Cirrus regarding the *Tracy*  
4 Action. Attached hereto as **Exhibit U** is a true and correct copy of this letter.

5           25.     On March 19, 2007, Allen sent a letter to Green regarding the *Tracy* Action.  
6 Attached hereto as **Exhibit V** is a true and correct copy of this letter.

7           26.     On March 19, 2007, Interstate's coverage counsel, Christopher J. Borders, sent a  
8 letter to Cruz. Attached hereto as **Exhibit W** is a true and correct copy of this letter.

9           27.     On March 20, 2007, Allen sent a letter to Cruz regarding the *Tracy* Action.  
10 Attached hereto as **Exhibit X** is a true and correct copy of this letter.

11           28     On March 21, 2007, Green sent an e-mail to Cruz regarding the *Tracy* Action.  
12 Attached hereto as **Exhibit Y** is a true and correct copy of the e-mail.

13           29.     On March 21, 2007, Green exchanged e-mails with independent adjuster Seth  
14 Davis regarding the *Tracy* Action. Attached hereto as **Exhibit Z** are true and correct copies of  
15 the e-mails.

16           30.     On May 23, 2007, the *Tracy* Action settled. Cirrus agreed to pay \$499,000 to  
17 Plaintiffs. Interstate paid \$399,000 of this amount on behalf of Cirrus, and United National paid  
18 \$100,000 on behalf of Cirrus. Attached hereto as **Exhibit AA** is a true and correct copy of the  
19 settlement agreement.

20           31.     On March 30, 2007, Cruz sent a letter to Allen regarding the settlement. Attached  
21 hereto as **Exhibit BB** is a true and correct copy of the letter.

22           32.     On March 30, 2007, Cruz sent a letter to Borders regarding the settlement.  
23 Attached hereto as **Exhibit CC** is a true and correct copy of the letter.

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1 33. Robinson was Cirrus's employee and acting within the course and scope of her  
2 employment at the time of Tracy's death.

3 34. Attached hereto as **Exhibit DD** is a true and correct copy of an application  
4 relating to the underwriting of the United National policy.

5 SO STIPULATED.

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7 DATED: July 20, 2008

HINSHAW & CULBERTSON LLP

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10 CHRISTOPHER J. BORDERS

CASEY A. HATTON

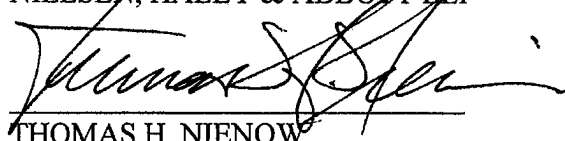
11 Attorneys for Plaintiff and Counter-Defendants

12 FIREMAN'S FUND INSURANCE COMPANY &

INTERSTATE FIRE & CASUALTY COMPANY

13  
14 DATED: July 21, 2008

NIELSEN, HALEY & ABBOTT LLP

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17 THOMAS H. NIENOW

18 Attorneys for Defendant and Counterclaimant

19 UNITED NATIONAL INSURANCE COMPANY  
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